

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF JULY, 2022

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO.8283 OF 2022(GM-CPC)

BETWEEN:

1. T G VEERAPRASAD

2. K.H.ANJANEYALU

L.NARSIMHA RAO

3. CHANDAVARAM PARTHASARATHY

4. CHANDAVARAM KODANDA RAMA PRASAD

5. CHANDAVARAM NARENDRA SARMA

6. CHANDAVARAM RAGHAVA KUMARI

7. SAMANTHAPUDI SATHYANARAYANA

8. TMT (INDA) LIMITED
COMPANY INCORPORATED UNDER COMPANIES ACT,
CORPORATE OFFICE 2ND FLOOR,
21ST CENTURY COMPLEX,
NAMPALLY, HYDERABAD-500 001
REP BY ITS AUTHORIZED SIGNATORY
MR. VEERAPRASAD

(BY SRI.UDAY HOLLA, SR.COUNSEL FOR

...PETITIONERS

SRI.AJAY J N AND AJAY J NANDALIKE, ADVOCATES)

AND:

1. SRI PRAKASH GANDHI

2. SMT. ASHA GANDHI

3. THE SUB-REGISTRAR
RAMANAGARAM TALUK,
RAMANAGARAM-562159

4. THE TAHASILDAR
RAMANAGARA TALUK
RAMANAGARAM-562159

...RESPONDENTS

(BY SRI.B.M.BALIGA, ADVOCATE FOR R1 & 2;
SMT.H.R.ANITHA, HCGP FOR R3 & 4)

THIS PETITION IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED
ORDER DTD.28.3.2022 ANNEXURE-A PASSED IN THE
PROCEEDINGS BEARING O.S.NO.445/2011 ON THE FILE OF THE
PRINCIPAL SR CIVIL JUDGE AND CHIEF JUDICIAL MAGISTRATE

RAMANAGARA REJECTING IA FILED BY THE PETITIONERS UNDER SECTION 151 OF THE CPC AND ETC.,

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 10.06.2022, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The captioned writ petition is filed by the petitioners-defendants 1 to 4 and 7 questioning the order of the learned Judge passed on I.A. filed under Section 151 of CPC. seeking permission to lead ocular evidence through video conferencing facilities.

2. For the sake of convenience, the parties are referred to as per their rank before the Court below.

3. The plaintiffs have instituted a suit seeking to declare them as absolute owners of suit lands and for consequential relief of injunction to restrain defendants 1 to 4 from interfering with their peaceful possession and enjoyment.

The plaintiffs have specifically pleaded at Para 7 of the plaint that the first defendant without any authorisation, on the

strength of forged and fabricated power of attorney, has illegally transferred suit lands belonging to plaintiff in favour of defendants 2 to 4. The plaintiffs have also alleged that they have registered a complaint against defendants 1 to 4 for the offences punishable under Sections 420, 461, 462 and 465 read with Section 120-B of IPC. The learned Magistrate has referred the matter for investigation under Section 156(3) of Cr.P.C. On these set of pleadings, the plaintiffs have instituted a suit against defendants.

4. Defendants 1 to 4 and 7 have contested the proceedings by filing written statement. The plaintiffs in support of their contention have led in ocular and documentary evidence. Defendants 1 to 4 and 7 filed an application under Section 151 of CPC seeking leave to permit defendant No.1 to lead ocular evidence through video conferencing facilities. The application is supported by a memorandum of facts by the counsel on record. At para 3 of the memorandum of facts, the counsel on record appearing for

Defendants 1 to 4 and 7 has stated that defendant No.1 is a senior citizen aged about 68 years having co-morbid health concerns and is a resident of Hyderabad and in the light of ongoing Covid-19 pandemic, the doctor has advised him to not to travel to Bengaluru. Therefore, prayer is made to permit defendant No.1 to lead evidence through video conferencing as this Court has laid down Rules for Video Conferencing for Courts dated 25.06.2020.

5. The plaintiffs have strongly resisted the application contending that the present application itself is not maintainable as application is supported by advocates memorandum of facts. Plaintiffs claim that the present application is filed only to drag on the case and the application is tainted with malafides. The plaintiffs have further contended that the conduct of defendant No.1 is found to be grossly unfair and the same can be gathered from the order sheet. Plaintiffs claim that defendant No.1 filed an application on 12.4.2001 seeking dismissal of suit and sought several

adjournments. The said application was ultimately rejected by this Court on 8.10.2021. Even after dismissal of the said application, the plaintiffs claim that defendant No.1 has been dragging on the matter by seeking several adjournments. Further, plaintiffs have objected for recording evidence through video conferencing by contending that there are voluminous documents.

6. The learned Judge after hearing both the parties and after having referred to the memorandum of facts and objections tendered by plaintiffs has rejected the application. The learned Judge while rejecting the application has taken note of the fact that defendant No.1 has taken several adjournments to lead evidence and first defendant has produced more than 100 documents and therefore, the learned Judge was not inclined to entertain the application. The application was also rejected on the count that it was not supported by an affidavit duly sworn to by defendant No.1.

7. The learned Senior Counsel Sri. Uday Holla reiterating the grounds would question the order under challenge on the ground that the order does not indicate that the learned Judge has applied his mind. He would further contend that the learned trial Judge erred in not exercising discretion which is vested with the Court in the light of Video Conferencing Rules for Courts framed by this Court and therefore the order is not sustainable. On maintainability, he would contend that the application does not fall within the frame work of Rule 18(2) of Civil Rules of Practice and therefore, the learned Judge ought to have entertained the application having regard to the fact that defendant No.1 is suffering from ailments and therefore, he is unable to appear before the Court. Placing reliance on the judgment rendered in the case of ***M.A. Shafieq Ahmed and another .vs. Smt. M.B. Khuthejabi and others***¹, the learned Senior Counsel would contend that memorandum of facts by advocate is permissible.

¹ 2013 SCC Online Kar 10552

8. The learned Senior Counsel placing reliance on the judgment rendered by this Court in the case of ***Twentieth Century Fox Film Corporation and another .vs. NRI film Production Associates (p) Ltd.***² at paragraph 7 would contend that this Court exercising revisional jurisdiction has entertained application to lead evidence through Video Conferencing. He has also placed reliance on the judgment rendered by the Calcutta High Court in the case of ***Dr. Baidyanath Halder .vs. Medical Council of India and others***³. He has also placed reliance on the Video Conferencing Rules framed by the State of Telangana. He concludes his arguments by contending that the Rules framed by Telangana High Court are identical and similar to the Rules framed by this Court and would contend that the Rules framed by this Court has to be implemented in true spirit as there has been rapid shift to virtual hearing and the Courts and litigants have adopted quickly to the challenges presented by the

² ILR 2003 KAR 789

³ 2012 SCC Online Cal 8082

pandemic. The learned Senior Counsel would point out that this trend is said to continue. Therefore, virtual hearings have to be encouraged where ever situation demands.

9. Per contra, learned counsel appearing for plaintiffs repelling the contentions raised by a learned Senior Counsel would support the order under challenge. Referring to the averments made in the memorandum of facts, he would contend that nothing specific is whispered in the memorandum of facts relating to the alleged co-morbidities. He would further contend that the relief sought in the present suit and the defence that is set up by Defendants 1 to 4 and 7 involves complex question of facts and law and there are voluminous documents relied on by both the parties. He would further point out that defendant No.1 has in fact produced more than 100 documents and therefore, the plaintiffs are entitled for cross-examination of first defendant physically. He would further point out that the conduct of defendant No.1 is grossly unfair and has deliberately not attended the Court till this date

as there are serious allegations against defendant No.1. He further point out that the application which is not supported by an affidavit as required under Rule 18(2) of Civil Rules of Practice is not at all maintainable. The learned Judge has rightly rejected the application. He would counter the contention of the learned Senior Counsel and contend that the proviso to Rule 18(2) of Civil Rules of Practice, has no application to the present case on hand. The memorandum of facts submitted by the counsel on record is not based from the records nor it relates to any act or conduct of the advocate himself. The application ought to have been supported by an affidavit of defendant No.1 indicating strong reasons supported by medical evidence to lead ocular evidence through video conferencing. On these set of defences, the learned counsel appearing for the plaintiffs would contend that the grounds urged in the present writ petition would not displace the conclusions arrived at by the learned Judge and

therefore, the order under challenge does not warrant any interference at the hands of this Court.

10. Heard the learned Senior counsel for the defendants 1 to 4 and 7 and the learned counsel appearing for plaintiffs.

11. The plaintiffs have made serious allegations against defendant No.1. At Paras 15 to 17 of the plaint, plaintiffs have seriously alleged the acts of defendant No.1 and there is serious allegation that defendant No.1 has fabricated the power of attorney. There is also serious allegation of impersonation before the registering authority. Plaintiffs are seriously disputing the alienations made by defendant No.1 under six registered sale deeds transferring in all 51.34 guntas of agricultural land. It would be useful for this Court to refer to paras 15 to 17, which read as under:

"15. In the process of knocking off a major portion of the lands owned and possessed by the Plaintiffs, the Defendants have entered into a Criminal conspiracy, forged and fabricated few powers of attorney of attorney

said to have been executed by the Plaintiffs and used the powers of Attorney that had been obtained by the First Defendant, on an earlier occasion and which powers of Attorney stood revoked / terminated / cancelled and impersonated the Plaintiffs before the registering authority as the authorized representative of the Plaintiffs and executed and registered six Sale Deeds, transferring in all 51.34 guntas of agricultural lands, that are owned and possessed by the Plaintiffs into the names of the second, third and fourth Defendants respectively. The Sale Deeds are registered before the fifty Defendant Sub Registrar, Ramanagaram. The First Defendant has executed the aforesaid tell tale Sale Deeds into the names of the second, third and fourth Defendants by using forged and fabricated Powers of Attorney with the active support and collusion of the fifty Defendant the Sub Registrar, Ramanagaram. The 5th Defendant before registering the documents did not even follow the basic norms of registration. The Sale Deeds registered are (1), (2), (3), (4), (5) and (6).

16. The Defendants 1 to 4 have intentionally mentioned wrong addresses of the Plaintiffs in the above mentioned forged and fabricated Sale Deeds as residents of No.79, Rangarao Road, Shankarapuram, Bangalore 560 004 and presently residing at No.62/2, Puttanna Road, Basavanagudi, Bangalore - 560 004 whereas, the Plaintiffs are the residents of the address mentioned in the cause title to the Plaintiff for over three and half years.

17. The first Defendant who has illegal and unauthorizedly and on and on the strength of the forged and the fabricated Powers of Attorney transferred the suit Schedule lands belonging to the Plaintiffs absolutely into the names of the Defendants 2 to 4 and has presented the said tell tale sale deeds for registration while showing the total sale consideration paid as at Rs.2,60,000. Which infact was far below the market value. The Plaintiffs have

however, nor received any payment in this regard either from the first Defendant or from the Defendants 2 to 4. The Plaintiffs issued a Notice to the 5th Defendant demanding of him not to register any Properties belonging to the Plaintiffs and to prove to them the copies of the GPAS based on which the Schedule Properties along with other Properties were registered by him while, marking a copy of the same to the Tahsildar, Ramanagaram Taluk, the sixth Defendant herein, requesting him not to transfer the Khatha of the above said lands into the names of the Defendants 1 to 4. The Plaintiffs have produced herewith the copies of the said notices for immediate reference."

The plaintiffs have also placed reliance on 36 title documents while defendant No.1 has produced more than 100 documents.

12. Now, in the background of intensity of dispute which is involved in the present suit, this Court has to examine as to whether defendant No.1 can be permitted to lead ocular evidence through video conferencing. Now let me examine the reasons assigned in the memorandum of facts. Paras 3 and 4 of the memorandum of facts are relevant and the same are culled out as under:

"3. I state that the matter is listed today for examination-in-chief of the DW-1, i.e., Defendant No.1. I submit that the said Defendant is a senior citizen aged about 68 years having co-morbid health concerns. I state that the said Defendant is a resident of Hyderabad and in light of the ongoing COVID-19 pandemic and keeping in mind his advanced age, he has been advised to not travel to Bangalore. A copy of the Doctor's certificate is produced along with this application.

4. It is stated at the Defendant's age, getting infected by the said virus may prove fatal to his health and therefore he is not in a position to travel to Bengaluru to lead evidence with respect to the instant case. It is stated that the Defendant is in no manner attempting to delay the trial or abuse the process of this Hon'ble Court and therefore the accompanying application seeking permission to lead evidence through video conference is being filed."

Defendant No.1 intends to lead ocular evidence through video conferencing. In the memorandum of facts, the counsel has stated that defendant No.1 is aged about 68 years having co-morbid health conditions. However, no particulars are furnished. What is the gravity of multiple co-existing diseases as alleged at Para 3 of the memorandum of facts is not forthcoming. The averments in the memorandum of facts are

quite vague and the same is found to be presented in a very casual manner.

13. The moot question that needs to be determined by this Court is as to whether defendant No.1 is entitled to lead ocular evidence through video conferencing. The Court has to also examine as to whether defendant No.1 is avoiding physical hearing and therefore, intends to take shelter under newly framed Video Conferencing Rules for Courts by this Court. This Court has to also examine as to whether defendant No.1 can insist for recording evidence through video conferencing by way of right. This Court also has to examine as to whether defendant No.1 has moved an application in strict compliance of Rules. Rule 6.2 contemplates that any proposal to move a request for video conferencing should first be discussed with the other parties or parties to the proceeding, except where it is not possible in urgent applications. It would be useful for this Court to refer to **Rule 6.2 of the Rules** which reads as under:

"6.2. Any proposal to move a request to for video conferencing should first be discussed with the other party or parties to the proceeding, except where it is not possible or inappropriate, for example in cases such as urgent applications."

14. If the present application is examined in the context of Rule 6.2 of the Rules, this Court would find that the present application filed by defendant No.1 seeking leave of the Court to lead ocular evidence is unilaterally filed without consulting plaintiffs. From the material on record it is evident that defendant No.1 filed an application on 12.4.2021 under Order VII Rule 11(b) and (d) of CPC seeking rejection of plaint and sought six adjournments and the said application was rejected by order dated 8.10.2021. Thereafter, defendant No.1 has sought several adjournments and this aspect factual aspect is evident from para 4 of the impugned order under challenge. Therefore, these material aspects clearly indicate that the present application is not tendered on account of urgency in the matter.

15. Secondly, the question that needs to be examined by this Court is as to whether defendant No.1 can insist for trial through video conferencing as a matter of right. Video Conferencing does have a place in the legal system. The challenge is not to exclude it but to use it with responsibility. Post pandemic situation, the Courts are compelled to adopt some alternatives, Video Conferencing is now most sought after alternative. Recording of evidence by Video Conferencing can be used only in those cases where there is no compulsion for the parties to appear before the Court or where the parties are unable to appear before the Court. The very object of having recourse to video conferencing is to eradicate huge time consumption. In cases where witness cannot appear before the Court without any inordinate delay, expense or inconvenience, the Court may consider recording evidence by way of video conferencing. On reading Rule 6.2 of the Rules, what emerges is that the consent of other parties is necessary.

16. The Court proceedings have an atmosphere/tone. Part of this tone comes from serious adherence to the legal rules of the Constitution, the Rules of Evidence, and also the Rules of Criminal Procedure. There is also a weighty human feel. Therefore, Courts have to caution themselves when adversal party objects for video conferencing. The video conferencing that is currently used is totally a new alternative with little knowledge of its impact on fundamental fairness. There have been a minimal number of empirical studies on video conferencing effect on the due process and the rights of the litigants. The Rules are framed in 2020 and the Courts are experimenting the effectiveness of video conferencing. It may be a cost efficient way to facilitate the Court room process. While its efficiency is clear, its effectiveness can be assessed only after securing feed backs from the Courts and Judges conducting trial through video conferencing. Until video conferencing is properly studied and that the feed backs in conducting trial through video conference in comprehensive

suits are analysed and replicated to the satisfaction of social science and legal communities, the Court has to be double cautious, More particularly, when an adversal party is objecting for recording of cross-examination through video conferencing. The Judges must be made aware of the differences in the dynamic of communication between video conferencing and traditional face to face interactions.

17. In the preceding paragraph this Court has taken note of the necessity of video conferencing in a given case. Recording evidence by video conferencing speeds up disposal of matters in the Court. Several litigations where ocular evidence of public servants, doctors, Bank Managers, Medical experts, handwriting experts, scientific experts, finger print experts is required to be recorded, the proceedings are stalled on account of inability to secure the above said witnesses. Therefore, in such cases the Court should exercise discretion and enable the litigants to avail the technology and Court should record evidence of such witnesses. If the evidence of

expert witnesses is recorded through video conferencing, it would be easier for the Officials and public servants to assist the Court without expending time and at the same time, their participation in the Court proceedings through video conferencing will not hinder their official duty. Video Conferencing should also be encouraged in matrimonial cases.

18. But, when it comes to comprehensive civil suits, where complex issues are involved, the Court should be cautious in allowing a party to lead evidence through video conferencing. Mere delay, expense or inconvenience cannot be a ground to allow a litigant to have an alternate mode of leading ocular evidence. The discretion should be better left to the trial Court where the litigations are pending for consideration. The present petitioner after lapse of 10 years has filed an application seeking rejection of plaint. It is only after rejection of the plaint, the petitioner who has never appeared before the Court has come up with this application, which is not supported by an affidavit, but is accompanied by

the memorandum of facts of the counsel on record. Therefore, the present petitioner-defendant has clearly demonstrated that his object is to prevent a fair trial. He is not merely purporting to invoke his right of access to the Court, but the material on record clearly indicates that his real object is not to have a fair trial at all. If the Court wish to avoid bringing the administration of justice into disrupt, in my view the Court should be slow in make decisions favoring those who set out to use the Court process to their advantage. In conclusion, this Court is of the view that the Court was justified in being reluctant to entertain the relief sought in the application as it clearly appeared to the trial Court that the petitioner is determined to subvert the adjudicative process by adopting dilatory tactics. The Court has rightly examined the petitioner's conduct with reference to the overall interest of justice and has declined to exercise the discretion in favour of the petitioner and the same does not warrant interference under Article 227 of the Constitution of India.

19. This Court has to also take note of the dignity and ritual of physical presence in Court as necessary for the public perception and justice. The very ceremony of trial in an open Court and presence of fact finder may exert a powerful force for truth telling. The opportunity to judge the demeanor of a witness face to face is accorded great value in Indian Judicial system. Trial by video conferencing cannot be justified for mere asking by the litigant to the suit. Merely by showing that it is inconvenient for a witness to attend trial can create a risk of denial of effective cross-examination.

20. If all these significant details as stated supra are taken into consideration, then this Court is of the view that the learned Judge was justified in declining leave to defendant No.1 to lead evidence through video conferencing. The defendants are not intending to examine a supporting witness. The defendant No.1 who is a contesting party intends to lead evidence through video conferencing. Defendant No.1 has not

filed an application. The present application is filed by the counsel on record. As rightly held by the learned Judge the application is not maintainable. The application is not accompanied by the affidavit of defendant No.1, but by memorandum of facts by a counsel on record indicating the illness of defendant No.1, which is not permissible under Rule 18(2) of Karnataka Civil Rules of Practice 1967. All facts on which the applicant relies to obtain reliefs sought in the application should have been set out in the affidavit accompanying the application. The facts relating to defendant No.1 suffering from co-morbid health concerns could not have been narrated by the counsel on record by filing a memorandum of facts. All these facts would lead to an inference that defendant No.1 has made a feeble attempt. The application lacks bonafides. In fact the material on record indicates that the conduct of defendant No.1 is unfair. Defendant No.1 having suffered an order on an application filed under Order 7 Rule 11 of CPC has come up with the

present application. There are serious allegations in regard to fraud, fabrication of document and also allegations in regard to impersonation before the Registering Authority. Therefore, this is a fit case where plaintiff is entitled to cross-examine defendant No.1 in a face to face trial instead through video conferencing.

21. The judgments cited by the learned Senior Counsel are not at all applicable to the present facts and circumstances of the case.

22. The writ petition is devoid of merits and hence, I proceed to pass the following:

ORDER

The writ petition is dismissed. No order as to costs.

Sd/-
JUDGE

*alb/-